


MAY 4 - 2005

COUNTY OF KAUAI
OFFICE OF THE COUNTY ATTORNEY

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May 4, 2005

TO: Barbara Robeson, Chair
Members of the Charter Review Commission

FROM: Lani Nakazawa 
County Attorney

SUBJECT: Charter Review Commission Questions

This memo responds to your April 7, 2005 request for clarification as to the following:

Questions: How the Charter Review Commission relates to/is consistent with, the Kaua'i County Charter, Article XXIII, General Provisions, Section 23.02, "Boards and Commission" particularly as to:

1. Staggered terms and term limits (Should we have specific terms?)
2. Political parties (Are we in compliance?)
3. Chair and other officers (Please clarify if the chair and vice-chair should only hold that position for one year.

Answers:

1. The term for a Charter Review Commissioner is three years.

The Kaua'i County Charter (K.C.C.), Article XXIV, section 24.03 designates the appointing authorities and describes the duties of Charter Review Commissioners, as follows:

Mandatory Review. Five years after the adoption of the charter and at ten year intervals thereafter, the mayor with the approval of the council shall appoint a charter commission composed of seven members to study and review the operation of the county

government under this charter. In the event the commission deems changes are necessary or desirable, the commission may propose amendments to the existing charter or draft a new charter which shall be submitted to the county clerk. The county clerk shall provide for the submission of such amendments or new charter to the voters at any general or special election as may be determined by the commission. The commission shall publish not less than thirty (30) days before any election at least once in a newspaper of general circulation within the county the entire text of the amendments or new charter. [Emphasis added].

As shown above, section 24.03 is silent on the imposition of any term for the Charter Review Commissioners.

On the other hand, K.C.C. section 23.02, which provides the general rules applicable to all boards and commissions, states in pertinent part:

Section 23.02. Board and Commissions. ... All boards and commissions ... shall be organized, appointed and vested with the power and authority as provided hereunder which are not in conflict with the provisions of this charter.

With respect to the duration of the appointment, K.C.C. Section 23.02.C. provides:

C. The members of all boards and commissions shall serve for staggered terms of three years and until their successors are appointed. However, no holdover term shall extend beyond ninety days. All members currently serving shall serve their term as set when they are appointed. ... Notwithstanding the holdover period or period of any vacancy, the term of any appointment shall be deemed to have commenced immediately after the normal termination date of his predecessor. The council may, by ordinance, provide for the staggering of terms provided that no term of members already appointed shall be changed.

Furthermore, K.C.C. Section 23.02.H. provides:

H. No member of any board or commission shall be eligible for more than two consecutive terms on the same board or commission or on two different boards or commissions of the county. After the expiration of the two consecutive terms, no persons shall be eligible for appointment to any county board or commission until one year has elapsed after such service. Any partial term of more than two years shall be considered a term as used herein.

Therefore, reading all the provisions cited above, the initial term of a Charter Review Commissioner is three years.

The application of the general rule regarding staggered terms or successive terms beyond the first term are not issues unless the Charter Review Commission operates for more than two or three years, as would be the case if the Charter Review Commission were mandated to conduct a continuous review. (In this regard, there is no Charter provision which prohibits a ten-year continuous review process by the Charter Review Commission.) The history of the past commissions show that in spite of the conflict with applying the general charter rules regarding terms for commissioners to charter review commissioners, the conflict has been avoided, because past commissions have not been mandated to conduct a continuous review, and have completed their review before the end of three years. When past commissions were convened pursuant to K.C.C. section 24.03, the work of the commissions was deemed fulfilled once the charter amendments or a new charter were submitted for pre-voting publication and voting by the electorate. After their work was complete, the commissions were dissolved, and the remainder of the commissioners' terms was allowed to lapse.

2. The Charter Review Commission will be in compliance with K.C.C. section 23.02 if "no more than a bare majority of the members...belong to the same political party." Since my office is unaware of the political affiliations of the members, we cannot provide an opinion on compliance.

3. The persons serving as chair or vice-chair can serve in that position for a year, and then must cede their positions to another individual. They may not hold the same position again until a year has elapsed from the time they served their first term, according to K.C.C. section 23.02(G).